Cr.MMO No.87 of 2006.

26.10.2007. Present: Mr. R.R. Rahi, Advocate, for the petitioner.

Mr. R.L. Chaudhary, Advocate, for the respondents.

An ex-parte judgment was passed on 31st May, 2003 by the learned Additional Chief Judicial Magistrate, Sarkaghat in Petition No.118-ii/2001 filed under Section 125 of the Code of Criminal Procedure by the respondents herein against the petitioner herein on the ground that after initially appearing in the Court, the petitioner had absented in the aforesaid proceedings. While allowing ex-parte the aforesaid petition filed by the respondents herein under Section 125 Cr.P.C., the Additional Chief Judicial Magistrate has ordered the petitioner to pay Rs.400/- per month as maintenance to respondent No.1 and Rs.500/- each to respondents No.2 and 3. Aggrieved, the petitioner filed a revision petition under Section 397 Cr.P.C. before the learned Sessions Judge, Mandi, who vide the impugned judgment dated 10th July, 2006 dismissed the same.

I have perused the aforesaid two judgments. I have also heard the arguments of the learned counsel for the parties.

In my view even though the learned trial Magistrate had proceeded ex-parte against the petitioner, the learned Sessions Judge while exercising his revisional jurisdiction ought to have remanded the matter to the learned trial Magistrate for fresh hearing of Section 125 petition because that course of action would have afforded effective opportunity to the petitioner to contest the claim of the respondents. The perusal of the

impugned judgment dated 10th July, 2006, however, shows that the learned Sessions Judge did not assign any plausible reason in refusing to do so.

This petition is allowed. The impugned judgment dated 10th July, 2006 is set aside. The judgment dated 31st May, 2003 passed by the learned Additional Chief Judicial Magistrate, Sarkaghat in Petition No.118-ii/2001 filed under Section 125 of the Code of Criminal Procedure is also set aside. The matter is remitted to the learned Additional Chief Judicial Magistrate for hearing afresh Section 125 petition filed by the respondents and for its disposal in accordance with law from the stage the ex-parte order was passed against the petitioner by the learned trial Magistrate on 29th May, 2003.

Since the matter is very old, I direct the learned trial Magistrate to very very expeditiously conclude the proceedings and pass the final judgment.

The parties through their learned counsel are directed to appear before the learned trial Magistrate, i.e. Additional Chief Judicial Magistrate, Sarkaghat on 6th December, 2007.

The petition is disposed of.

Cr.MP No.376 of 2006.

In view of the disposal of the main petition, this application shall also stand disposed of.

26th October, 2007. (V.K. Gupta), C.J.
(tr)